

\$10,000 of United States property not described in section 956(b)(2). Each of the two items of property has an estimated useful life of 5 years, and T Corporation sustains \$4,000 of depreciation with respect to such properties during its taxable year 1964. Corporation T's current and accumulated earnings and profits as of December 31, 1964, exceed \$16,000, determined as provided in paragraph (b) of § 1.956-1. Corporation T pays no amounts during 1963 to which section 959(c)(1) applies. Corporation T's investment of earnings in United States property at December 31, 1964, is \$16,000, and its increase for 1964 in earnings invested in United States property is \$6,000.

Example 4. Foreign corporation U uses the calendar year as a taxable year and acquires before January 1, 1963, stock in domestic corporation M having as to U Corporation an adjusted basis of \$10,000. On December 1, 1964, pursuant to a statutory merger described in section 368(a)(1), M Corporation merges into domestic corporation N, and U Corporation receives on such date one share of stock in N Corporation, the surviving corporation, for each share of stock it held in M Corporation. Pursuant to section 354 no gain or loss is recognized to U Corporation, and pursuant to section 358 the basis of the property received (stock of N Corporation) is the same as that of the property exchanged (stock of M Corporation). Corporation U is not considered for purposes of section 956 to have acquired United States property by reason of its receipt of the stock in N Corporation.

Example 5. The facts are the same as in example 4, except that U Corporation acquires the stock of M Corporation on February 1, 1963, rather than before January 1, 1963. For purposes of determining U Corporation's aggregate investment in United States property on December 31, 1963, U Corporation has, by virtue of acquiring the stock of M Corporation, acquired \$10,000 of United States property. Corporation U pays no amount during 1963 to which section 959(c)(1) applies. The reorganization and resulting acquisition on December 1, 1964, by U Corporation of N Corporation's stock also represents an acquisition of United States property; however, assuming no other change in U Corporation's aggregate investment in United States property during 1964, U Corporation's increase for such year in earnings invested in United States property is zero.

(2) [Reserved]

(e) *Effective/applicability date.* The last sentence of paragraph (b)(1)(vi) of this section applies to taxable years of controlled foreign corporations beginning on or after May 2, 2006, and for taxable years of United States shareholders with or within which such taxable years of the controlled foreign corpora-

tions end. Taxpayers may elect to apply the rule of the last sentence of paragraph (b)(1)(vi) of this section to taxable years of controlled foreign corporations beginning after December 31, 2004, and for taxable years of United States shareholders with or within which such taxable years of the controlled foreign corporations end. If an election is made to apply the last two sentences of § 1.954-2(c)(2)(ii) and § 1.954-2(c)(2)(v) through (vii) to taxable years of a controlled foreign corporation beginning after December 31, 2004, then the election must also be made for the last sentence of paragraph (b)(1)(vi) of this section.

(Secs. 956(c), 7805, Internal Revenue Code of 1954 (76 Stat. 1017, 68A Stat. 917; 26 U.S.C. 956(c) and 7805 respectively)))

[T.D. 6704, 29 FR 2601, Feb. 20, 1964, as amended by T.D. 7712, 45 FR 52374, Aug. 7, 1980; T.D. 7797, 46 FR 57675, Nov. 25, 1981; T.D. 8209, 53 FR 22171, June 14, 1988; T.D. 9008, 67 FR 48025, July 23, 2002; T.D. 9406, 73 FR 38117, July 3, 2008; T.D. 9525, 76 FR 26181, May 6, 2011; T.D. 9589, 77 FR 27614, May 11, 2012]

§ 1.956-2T Definition of United States Property (temporary).

(a) through (b)(1)(x) [Reserved] For further guidance, see § 1.956-2(a) through (b)(1)(x).

(xi) An obligation of a United States person arising from an upfront payment by a controlled foreign corporation (within the meaning of section 957(a)) with respect to a notional principal contract (within the meaning of § 1.446-3(c)(1)) where the following conditions are satisfied—

(A) The controlled foreign corporation that makes the upfront payment is a dealer in securities or commodities (within the meaning of section 475(c)(1) or (e)(1));

(B) The upfront payment is required under a contract that is cleared by a derivatives clearing organization (as such term is defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)) or a clearing agency (as such term is defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)) that is registered as a derivatives clearing organization under the Commodity Exchange Act or as a clearing agency under the Securities Exchange Act of 1934, respectively;

(C) The controlled foreign corporation makes the upfront payment:

(1) To or through a United States person that is a clearing member of a derivatives clearing organization or clearing agency, or

(2) Directly to the derivatives clearing organization or clearing agency if the controlled foreign corporation is a clearing member of such derivatives clearing organization or clearing agency;

(D) The upfront payment is made by the derivatives clearing organization or clearing agency, directly or indirectly, to the original counterparty to the contract;

(E) The original counterparty to the contract that receives the upfront payment, as described in paragraph (b)(1)(xi)(D) of this section, is required by the derivatives clearing organization or clearing agency to make, by the end of the business day on which the upfront payment is made by the controlled foreign corporation, a payment in the nature of initial variation margin that is equal (before taking into account any change in the value of the contract between the time the contract is entered into and the time at which the payment is made) to the amount of the upfront payment and such payment is made, directly or indirectly, to the derivatives clearing organization or clearing agency; and

(F) The payment in the nature of initial variation margin is paid by the derivatives clearing organization or clearing agency, directly or indirectly, to the controlled foreign corporation.

(G) *Examples.* The following examples illustrate the application of this paragraph (b)(1)(xi):

Example 1. CFC is a controlled foreign corporation that is wholly owned by USP, a domestic corporation. CFC is a dealer in securities under section 475(c)(1). CFC enters into a credit default swap (that it treats as a notional principal contract for U.S. federal income tax purposes) with unrelated counterparty B. The credit default swap is accepted for clearing by a U.S.-registered derivatives clearing organization (DCO). CFC is not a member of DCO. CFC uses a U.S. affiliate (CM), which is a member of DCO, as its clearing member to submit the credit default swap to be cleared. CM is a domestic corporation that is wholly owned by USP. The standardized terms of the credit default swap provide that, for a term of X years, CFC will

pay B a fixed coupon of 100 basis points per year on a notional amount of \$Y. At the time CFC and B enter into the credit default swap, the market coupon for similar credit default swaps is 175 basis points per year. To compensate B for the below-market annual coupon payments that B will receive, the contract requires CFC to make an upfront payment through CM to DCO. DCO then makes the upfront payment to B through B's clearing member. DCO also requires B to post initial variation margin in an amount equal to the upfront payment. B pays the initial variation margin through its clearing member to DCO. DCO then pays the initial variation margin through CM to CFC. Because the conditions set out in this paragraph (b)(1)(xi) are satisfied, the obligation of CM arising from the upfront payment by CFC does not constitute United States property for purposes of section 956.

Example 2. Assume the same facts as in *Example 1*, except that counterparty B is, like CM, a domestic corporation that is wholly owned by USP. Because the conditions set out in this paragraph (b)(1)(xi) are satisfied, the obligations of CM and B arising from the upfront payment by CFC do not constitute United States property for purposes of section 956.

Example 3. Assume the same facts as in *Example 2*, except that CFC uses an unrelated person as its clearing member. Because the conditions set out in this paragraph (b)(1)(xi) are satisfied, the obligation of B arising from the upfront payment by CFC does not constitute United States property for purposes of section 956.

(b)(2) through (d)(1) [Reserved] For further guidance, see § 1.956-2(b)(2) through (d)(1).

(2) *Obligation defined—(i) Rule.* For purposes of § 1.956-2 of the regulations, the term “obligation” includes any bond, note, debenture, certificate, bill receivable, account receivable, note receivable, open account, or other indebtedness, whether or not issued at a discount and whether or not bearing interest, except that such term shall not include:

(A) Any indebtedness arising out of the involuntary conversion of property which is not United States property within the meaning of paragraph (a)(1) of § 1.956-2, or

(B) Any obligation of a United States person (as defined in section 957(c)) arising in connection with the provision of services by a controlled foreign corporation to the United States person if the amount of such obligation outstanding at any time during the

taxable year of the controlled foreign corporation does not exceed an amount which would be ordinary and necessary to carry on the trade or business of the controlled foreign corporation and the United States person if they were unrelated. The amount of such obligations shall be considered to be ordinary and necessary to the extent of such receivables that are paid within 60 days.

See § 1.956-2(b)(1)(v) for the exclusion from United States property of obligations arising in connection with the sale or processing of property where such obligations are ordinary and necessary as to amount.

(ii) *Effective date.* This section is effective June 14, 1988, with respect to investments made on or after June 14, 1988.

(e) [Reserved] For further guidance see § 1.956-2(e).

(f) *Effective/applicability date.* Paragraph (b)(1)(xi) applies to payments described in § 1.956-2T(b)(1)(xi) made on or after May 11, 2012. Taxpayers may apply the rules of paragraph (b)(1)(xi) to payments described in § 1.956-2T(b)(1)(xi) made prior to May 11, 2012.

(g) *Expiration date.* The applicability of paragraph (b)(1)(xi) expires on Friday, May 8, 2015.

[T.D. 8209, 53 FR 22171, June 14, 1988, as amended at T.D. 9406, 73 FR 38117, July 3, 2008; T.D. 9525, 76 FR 26181, May 6, 2011; T.D. 9589, 77 FR 27614, May 11, 2012]

§ 1.956-3T Certain trade or service receivables acquired from United States persons (temporary).

(a) *In general.* For purposes of section 956(a) and § 1.956-1, the term “United States property” also includes any trade or service receivable if the trade or service receivable is acquired (directly or indirectly) after March 1, 1984, from a related person who is a United States person (as defined in section 7701(a)(30)) (hereinafter referred to as a “related United States person”) and the obligor under the receivable is a United States person. A trade or service receivable described in this paragraph shall be considered to be United States property notwithstanding the exceptions (other than subparagraph (H)) contained in section 956(b)(2). The terms “trade or service receivable” and “related person” have

the respective meanings given to such terms by section 864(d) and the regulations thereunder. For purposes of this section, the exception contained in § 1.956-2T(d)(2)(i)(B) for short-term obligations shall not apply to service receivables described in this paragraph.

(b) *Acquisition of a trade or service receivable—(1) General rule.* The rules of § 1.864-8T(c)(1) shall be applied to determine whether a controlled foreign corporation has acquired a trade or service receivable.

(2) *Indirect acquisitions—(i) Acquisition through unrelated person.* A trade or service receivable will be considered to be acquired from a related person if it is acquired from an unrelated person who acquired (directly or indirectly) such receivable from a person who is a related person to the acquiring person.

(ii) *Acquisition by nominee or pass-through entity.* A controlled foreign corporation will be considered to have acquired a trade or service receivable of a related United States person held on its behalf:

(A) By a nominee or by a partnership, simple trust, S corporation or other pass-through entity to the extent the controlled foreign corporation owns (directly or indirectly) a beneficial interest in such partnership or other pass-through entity; or

(B) By another foreign corporation that is controlled by the controlled foreign corporation, if one of the principal purposes for creating, organizing, or funding such other foreign corporation (through capital contributions or debt) is to avoid the application of section 956. See § 1.956-1T.

The rule of this paragraph (b)(2)(ii) does not limit the application of paragraph (b)(2)(iii) of this section regarding the characterization of trade or service receivables of unrelated persons acquired pursuant to certain swap or pooling arrangements. The following examples illustrate the application of this paragraph (b)(2)(ii).

Example 1. FS1, a controlled foreign corporation with substantial accumulated earnings and profits, contributes \$2,000,000 to PS, a partnership, in exchange for a 20 percent limited partnership interest in PS. PS purchases trade or service receivables of FS1’s domestic parent, P. The obligors under the receivables are United States persons. PS does not purchase receivables of any person